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Regulatory Updates: FINRA and SEC Rule Changes and Guidance of Interest

Christine Lazaro
St. John's University School of Law

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Over the past year, FINRA has proposed and approved new rules and amendments to its existing rules. FINRA has also issued supplemental guidance on existing rules. This article highlights those rule changes and guidance governing sales practice obligations of brokers, as well as the arbitration process. Additionally, this article will cover certain recently adopted SEC and CFTC rules.

I. FINRA Rules and Guidance

A. Rules Governing the Arbitration Process

Arbitration Award Offsets: Occasionally, counterclaims will be filed in an arbitration, and the arbitrator may end up ordering both the Claimant and the Respondent to pay the other. This often occurs in industry disputes, where, for example, the broker may be ordered to pay a portion of an outstanding promissory note and the firm may be ordered to pay compensation for wrongful discharge. FINRA rules did not address whether the two awards might be offset, and arbitrators did not always address that issue in the award. Accordingly, FINRA has amended Rules 12904 and 13904 to address the payment of awards when an arbitrator orders both Claimant and Respondent to make some payment.[1] Rules 12904(j) and 13904(j) both state in relevant part:

> Absent specification to the contrary in the award, when arbitrators order opposing parties to make payments to one another, the monetary awards shall offset, and the party assessed the larger amount shall pay the net difference.[2]

1. *See* FINRA, REGULATORY NOTICE 16-36, ARBITRATION AWARD OFFSETS; SEC APPROVES AMENDMENTS TO THE CODES OF ARBITRATION PROCEDURE REGARDING AWARD OFFSETS (Sep. 2016), *at* http://www.finra.org/sites/default/files/Regulatory-Notice-16-36.pdf.

2. FINRA Rules 12904(j) and 13904(j) both became effective October 24, 2016.

Arbitration Panel Selection: When customer cases call for three arbitrators, parties receive three lists: a chair-qualified public list, a public list, and a non-public list. Parties had received 10 names on each list that they could rank or strike. Under Rule 12403, parties had been permitted to strike up to four names on both the chair-qualified public list and the public list; and parties were permitted to strike all of the names on the non-public list. If all of the names were stricken from the non-public list, FINRA would attempt to fill the third seat from the remaining names on the public list first, and then the chair-qualified public list. However, given the number of strikes each party has, there may have been no names left on either list able to serve. If there were no names remaining, FINRA may simply have appointed an arbitrator. To minimize the need for FINRA to appoint arbitrators in this fashion, FINRA amended Rules 12403(a)(1)(B) and (c)(2)(A) to increase the number of names initially on the public list and concurrently increase the number of strikes available to each party.[3] Now, parties will receive 15 names on the public list, and are able to strike up to 6 of the names. The amendments became effective on January 3, 2017.

Motions to Dismiss in Arbitration: Parties have very few grounds upon which they may have a motion to dismiss considered prior to the non-moving party having presented their case in chief. An arbitration panel may only act upon a motion to dismiss if: (a) the non-moving party previously released the claim in dispute, either by a signed settlement agreement or a written release;[4] (b) the moving party was not associated with the account, security, or conduct at issue;[5] or (c) the claim was ineligible for arbitration because six years have elapsed from the occurrence or event giving rise to the claim.[6] FINRA has amended Rules 12504 and 13504 to add an additional ground for dismissal.[7]

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3. *See* FINRA, REGULATORY NOTICE 16-44, ARBITRATION PANEL SELECTION; SEC APPROVES AMENDMENTS TO THE CUSTOMER CODE OF ARBITRATION PROCEDURE REGARDING PANEL SELECTION IN CASES WITH THREE ARBITRATORS (Dec. 2016), *at* http://www finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-16-44.pdf.

4. *See* FINRA, RULE 12504(a)(6)(A), 13504(a)(6)(A) (2017).

5. *See* FINRA, RULE 12504(a)(6)(B), 13504(a)(6)(B) (2017).

6. *See* FINRA, RULE 12206, 13206 (2011).

7. *See* FINRA, REGULATORY NOTICE 17-02, MOTIONS TO DISMISS IN ARBITRATION; SEC APPROVES AMENDMENTS TO THE CODES OF ARBITRATION PROCEDURE REGARDING MOTIONS TO DISMISS (Jan. 2017), *at* http://www finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-17-02.pdf.

Rules 12504(a)(6)(C) and 13504(a)(6)(C) now permit the panel to consider a motion to dismiss on the following ground:

> The non-moving party previously brought a claim regarding the same dispute against the same party that was fully and finally adjudicated on the merits and memorialized in an order, judgment, award, or decision.

Now, claims that have been settled *or* adjudicated may be dismissed. The amendments to the rules were effective for motions filed after January 23, 2017.

Dispute Resolution Party Portal: Several years ago, FINRA developed a Party Portal to allow claim filings and interactions to occur through a secure, online location. Initially, the portal was rolled out through a pilot program, with brokerage firms consenting to participation. The portal was then expanded and made available for all cases on a voluntary basis. FINRA has now amended the Arbitration Code to require all parties, except *pro se* customers, to use the Party Portal.[8] FINRA has amended the Mediation Code to permit parties to use the Party Portal for mediations. A number of the rules were amended, including Rules 12100 (Definitions) and 12300 (Filing and Serving Documents).[9]

Generally, all documents must be filed through the Party Portal; however, there are several exceptions. Documents produced in connection with the Discovery Guide or in response to a discovery request should not be filed through the Party Portal;[10] however, correspondence related to discovery must be filed with the Party Portal.[11] Answers containing third party claims may not be served on the third party through the Party Portal.[12] If a pleading is amended to add a party, both the pleading and any motion to amend may not be served on the new party through the Party Portal.[13] Subpoenas may not be served on

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8. *See* FINRA, REGULATORY NOTICE 17-03, DISPUTE RESOLUTION PARTY PORTAL; SEC APPROVES AMENDMENTS TO THE CUSTOMER AND INDUSTRY CODES OF ARBITRATION PROCEDURE REGARDING REQUIRED USE OF THE DISPUTE RESOLUTION PARTY PORTAL (Jan. 2017), *at* http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-17-03.pdf.

9. *See* FINRA, REGULATORY NOTICE 17-03, Attachment A, *at* http://www finra.org/sites/default/files/notice_other_file_ref/Regulatory-Notice-17-03-Attachement-A.pdf.

10. *See* FINRA, RULE 12300(a)(3) (2017).

11. *See* FINRA, RULE 12300(b)(1) (2017).

12. *See* FINRA, RULE 12303(b) (2017).

13. *See* FINRA, RULE 12309(a)(2), (c) (2017).

non-parties through the Party Portal.[14] For documents not served through the Party Portal, service may be accomplished by first-class mail, overnight mail service, overnight delivery service, hand delivery, email or facsimile.[15] The new requirements are effective for all cases filed on or after April 3, 2017. FINRA has also issued a User Guide to help parties with the portal.[16]

Arbitrator Chairperson Eligibility: Chairpersons must have some experience in arbitration, as well as specific training. On customer cases, chairpersons must meet the definition of "public arbitrator." Previously, if an arbitrator had completed the chairperson training, he or she was eligible to chair a panel if he or she had served as an arbitrator through award on two (if the arbitrator is also an attorney) or three cases. Following the amendments to the definitions of public and non-public arbitrators, a number of public arbitrators were reclassified as non-public, making them ineligible for the chairperson list in customer cases. The chairperson roster was reduced by approximately 14%.[17] Because of this decline in numbers, FINRA has asked chair-qualified arbitrators to travel to nearby locations to ensure there are a sufficient number of arbitrators available to the parties.[18] This has raised concerns with parties because the out-of-town arbitrators may be unwilling to travel during inclement weather, and may not be familiar with local venue customs and procedures.[19] To address these concerns, FINRA amended Rule 12400 and 13400 to provide that if an arbitrator is an attorney, they need only to have served on one case through to award to qualify for the chair roster (provided they have also completed the chairperson training).[20] The amendments became effective on January 9, 2017.

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14. *See* FINRA, RULE 12512(d) (2017).

15. *See*, *e.g.*, FINRA, RULE 12300(a)(2)(C), (a)(3) (2017)

16. FINRA, FINRA DR PORTAL: USER GUIDE FOR ARBITRATION AND MEDIATION CASE PARTICIPANTS (Apr. 2017), *available at* http://www finra.org/sites/default/files/dr-portal-user-guide-parties.pdf.

17. *See* FINRA, REGULATORY NOTICE 17-04, ARBITRATOR CHAIRPERSON ELIGIBILITY; SEC APPROVES AMENDMENTS TO THE CUSTOMER AND INDUSTRY CODES OF ARBITRATION PROCEDURE BROADENING CHAIRPERSON ELIGIBILITY IN ARBITRATION (Jan. 2017), *at* http://www finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-17-04.pdf.

18. *Id.*

19. *Id.*

20. *Id.*

B. Rules Governing Sales Practices of Brokers

Communications with the Public: FINRA has comprehensive rules governing firm and broker communications with the public. FINRA has amended portions of the rules governing correspondence concerning investment companies (mutual funds) and investment analysis tools. FINRA had required that firms file the management's discussion of fund performance portion of a registered investment company shareholder report if that report was provided to prospective investors. Because these reports are already filed with the SEC and do not present the same concerns that other marketing pieces may present, FINRA has eliminated this requirement from Rule 2210.[21] FINRA has also eliminated the requirement to file registered investment company ranking and comparison backup material, but still requires the firm to maintain the materials as part of its records.[22] FINRA has amended the requirement that communications concerning registered investment companies be filed. The rule had covered both generic communications and communications that promote a specific registered investment company or family of registered investment companies. Now, firms are only required to file those communications that promote a fund or fund family.[23]

FINRA has amended Rule 2213, which deals with communications containing bond fund volatility ratings. These communications were required to be accompanied or preceded by the bond fund's prospectus as well as contain specific disclosures. FINRA also required that the communications be filed before they were used. Again, FINRA determined that these communications were not causing the sorts of issues that were expected. FINRA has amended Rule 2213 to remove the requirement that communications containing bond fund volatility ratings be accompanied or preceded by a prospectus and eliminated many of the disclosure requirements.[24] Additionally, firms are no longer required to pre-file these

21. *See* FINRA, REGULATORY NOTICE 16-41, COMMUNICATIONS WITH THE PUBLIC; SEC APPROVES AMENDMENTS TO RULES GOVERNING COMMUNICATIONS WITH THE PUBLIC (Oct. 2016), *at* http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-16-41.pdf.

22. *Id.*

23. *Id.*; *see also*, FINRA, RULE 2210(c)(3)(A) (2017).

24. *See* FINRA, REGULATORY NOTICE 16-41.

communications, and may file them after they have begun to use the communications.[25]

FINRA Rules 2210(c)(3)(C) and 2214(a) required that firms that utilize investment analysis tools file templates for reports produced by the tool as well any written communications concerning the tool. FINRA has amended these rules to eliminate the filing requirements. Now, firms must only provide FINRA staff with access to the tool upon request.[26] FINRA has also amended its rules governing the use of templates. Firms are not required to file retail communications that are based on templates, and are permitted to update statistical or other non-narrative information without refiling the template. FINRA had required any updates to the narrative information to be refiled. However, FINRA found that the narrative information did not present significant investor risk, and has expanded the exclusion from filing to also cover updates to narrative information.[27]

The amendments to the rules were effective January 9, 2017.

Pricing Disclosure in the Fixed Income Markets: Pursuant to SEC Rule, firms are required to provide transaction cost information when the firm acts as a principal in connection with an equity trade. Neither FINRA nor the SEC had any comparable requirement if the transaction involved a bond. FINRA coordinated its rulemaking efforts with those of the MSRB to develop similar disclosure obligations for corporate, agency and municipal debt trades.[28] The new disclosure requirements of FINRA Rule 2232 mirror those of MSRB Rule G-15. A firm is now required to disclose the mark-up or mark-down that a non-institutional customer has paid for a bond trade, if the firm also executes one or more offsetting principal transactions in the same bond on the same day which in the aggregate meet or exceed the size of the customer trade.[29] Both

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25. *Id.*

26. *Id.*

27. *Id.*

28. *See* FINRA, REGULATORY NOTICE 17-08, PRICING DISCLOSURE IN THE FIXED INCOME MARKETS SEC; APPROVES AMENDMENTS TO REQUIRE MARK-UP/ MARK-DOWN DISCLOSURE ON CONFIRMATIONS FOR TRADES WITH RETAIL INVESTORS IN CORPORATE AND AGENCY BONDS (Feb. 2017), *at* http://www finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-17-08.pdf; MSRB, REGULATORY NOTICE 2016-28, NEW DISCLOSURE REQUIREMENTS UNDER MSRB RULE G-15 AND PREVAILING MARKET PRICE GUIDANCE PURSUANT TO RULE G-30 EFFECTIVE MAY 14, 2018 (Nov. 2016), *at* http://www msrb.org/~/media/Files/Regulatory-Notices/Announcements/2016-28.ashx?n=1.

29. *Id.*

rules provide exceptions to the disclosure requirement, if, for example, the firm executes principal trades on a trading desk functionally separate from the trading desk that handles customer trades.[30] FINRA has provided guidance for firms as to what would be considered an "off-setting" transaction:

> If a member purchases 100 bonds at 9:30 a.m., and then sells to three customers, who each buy 50 bonds in the same security on the same day, without purchasing any more of the bonds, the rule requires mark-up disclosure on two of the three trades, since one of the trades would need to be satisfied out of the member's prior inventory, or its short position, rather than offset by the member's same-day principal transaction.[31]

Firms are required to determine the prevailing market price for the security when determining the mark-up or mark-down.[32] The mark-up or mark-down must be disclosed in a dollar amount and as a percentage of the prevailing market price.[33] The MSRB rule contains similar requirements.[34]

For all bond transactions, FINRA requires that firms disclose a reference or link to security specific trade data, which is available through a FINRA hosted web page containing TRACE trade data.[35] Firms are also required to provide investors with the time of their trade, so that they may more easily identify their transactions in the TRACE data.[36] The MSRB requires similar disclosures; however, the link must be to EMMA instead of TRACE.[37] The amendments and new requirements will go into effect on May 14, 2018.

Financial Exploitation of Seniors: Financial exploitation of senior investors has been a concern of FINRA's for many years. In January 2016, NASAA adopted the Model Act to Protect Vulnerable Adults from Financial Exploitation.[38] FINRA followed close behind, and has amended Rule 4512

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30. *Id.*

31. FINRA, REGULATORY NOTICE 17-08.

32. *Id.*

33. *Id.*

34. *See* MSRB, REGULATORY NOTICE 2016-28.

35. *See* FINRA, REGULATORY NOTICE 17-08.

36. *Id.*

37. *See* MSRB, REGULATORY NOTICE 2016-28.

38. *See* NASAA, NASAA MODEL LEGISLATION OR REGULATION TO PROTECT VULNERABLE ADULTS FROM FINANCIAL EXPLOITATION (Jan. 22, 2016), *available at* http://nasaa.cdn.s3.amazonaws.com/wp-content/uploads/2011/07/NASAA-Model-Seniors-Act-adopted-Jan-22-2016.pdf.

(Customer Account Information) and adopted Rule 2165 (Financial Exploitation of Specified Adults).[39]

Rule 4512 will now require firms to make reasonable efforts to obtain the name of and contact information for a trusted contact person.[40] This must be done either at account opening or when account information is being updated.[41] Asking for the information from a customer will be considered reasonable efforts to obtain the information. The firm must also disclose that it may contact the trusted contact and:

> disclose information about the customer's account to address possible financial exploitation, to confirm the specifics of the customer's current contact information, health status, or the identity of any legal guardian, executor, trustee or holder of a power of attorney, or as otherwise permitted by Rule 2165.[42]

In addition to amending Rule 4512, FINRA adopted Rule 2165, which permits a firm to place a temporary hold on disbursement of funds or securities.[43] If a firm reasonably believes that financial exploitation has occurred, is occurring, has been attempted or will be attempted, the firm is permitted to place a hold on the disbursement of funds or securities from the customer's account.[44] There is no obligation to do so, the rule is entirely permissive. The rule defines the various terms included within it, including who is a specified adult, and what is considered financial exploitation.[45]

Once a firm places a hold, it is required to initiate an internal review of the facts and circumstances that led the firm to believe there may be financial exploitation.[46] A firm must notify the customer and the trusted contact of the hold within two days.[47] The firm is not required to notify the trusted contact if it believes the person is involved in the suspected financial exploitation. The

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39. *See* FINRA, REGULATORY NOTICE 17-11, FINANCIAL EXPLOITATION OF SENIORS; SEC APPROVES RULES RELATING TO FINANCIAL EXPLOITATION OF SENIORS (Mar. 2017), *at* http://www.finra.org/sites/default/files/Regulatory-Notice-17-11.pdf.

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

firm may discuss the suspected financial exploitation with the customer's broker, unless the firm believes the broker may be involved.[48] The temporary hold should expire within 15 business days, but may be extended for an additional 10 days.[49] The amendment and the new rule will become effective on February 5, 2018.

C. FINRA Guidance

Forum Selection Provisions: In July 2016, FINRA issued a reminder to firms that customers retain their right to request arbitration with FINRA even if the customer has signed an agreement with a forum selection clause designating another forum.[50] FINRA Rule 12200 requires parties to arbitrate under the Code if requested by the customer.[51] FINRA Rule 2268(d) prohibits any predispute arbitration agreement from including any condition that limits or contradicts the rules of any SRO, including Rule 12200.[52] In the notice, FINRA discusses recent federal court opinions which have enforced forum selection clauses which are contrary to FINRA rules:

> The holdings of these courts rest on the assumption that the duty to arbitrate under FINRA rules, or to arbitrate in FINRA's arbitral forum, is merely "contractual" and can be superseded or waived. This assumption is inconsistent with the fact that the Exchange Act requires most broker-dealers to be members of FINRA and that FINRA's rules are approved by the Securities and Exchange Commission (SEC), binding on FINRA member firms and associated persons, and have the force of federal law. FINRA rules are not mere contracts that member firms and associated persons can modify.[53]

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48. *Id.*

49. *Id.*

50. *See* FINRA, REGULATORY NOTICE 16-25, "FORUM SELECTION PROVISIONS; FORUM SELECTION PROVISIONS INVOLVING CUSTOMERS, ASSOCIATED PERSONS AND MEMBER FIRMS (July 2016), *at* http://www finra.org/sites/default/files/notice_other_file_ref/Regulatory-Notice-16-25.pdf.

51. *Id.*

52. *Id.*

53. *Id.*

In outlining a firm's obligations under Rules 2268 and 12200, FINRA provides the firms with guidance as to what potential consequences may result if a firm uses a predispute agreement that is inconsistent with these rules:

> FINRA rules set forth specific requirements relating to predispute arbitration agreements and when a customer dispute must be arbitrated at FINRA. They are not default rules that may be overridden by more specific or separate contractual terms without consequences under FINRA rules. Thus, any member firm's denial, limitation or attempt to deny or limit a customer's right to request FINRA arbitration, even if the customer seeks to exercise that right after having agreed to a forum selection clause specifying a venue other than a FINRA arbitration forum, would violate FINRA Rules 2268 and 12200. In addition, in FINRA's view, the failure to submit a dispute to arbitration under the Customer Code as required by the Code would violate FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade).[54]

If a firm chooses to utilize a forum selection provision that provides for a forum other than FINRA, FINRA suggests appropriate language to include to ensure compliance with Rule 2286:

> This agreement does not prohibit or restrict you from requesting arbitration of a dispute in the FINRA arbitration forum as specified in FINRA rules.[55]

In the notice, FINRA has also reminded firms that brokers have the same right to request arbitration with FINRA under Rule 13200.[56] This rule may not be waived through the use of a forum selection clause specifying a forum other than FINRA. FINRA will deem it "conduct inconsistent with just and equitable principles of trade and a violation of FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade)" if a firm attempts to require a broker to waive his or her rights to arbitrate before FINRA under Rule 13200.[57] FINRA has suggested that firms use the same language suggested for customer agreements if it will utilize a forum selection clause with brokers that specifies a forum other than FINRA.[58]

Social Media and Digital Communications: In April 2017, FINRA issued additional guidance with respect to the recordkeeping, suitability, supervision,

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54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

and content requirements when communicating with the public while using social media or personal devices.[59] FINRA has provided a series of questions and answers to provide guidance to firms and brokers as to what they may and may not do.

A firm is required to retain communications related to its business that occur through text messaging apps or chat services.[60] FINRA has provided examples of communications that would not need to be retained under Rule 2210: information about the firm's sponsorship of a charitable event, a human interest article, an employment opportunity, or employer information covered by state and federal fair employment laws.[61] If a firm shares or links to content, the firm has adopted that content, although, generally, the firm will not adopt the content of any information that is contained through links in the shared content.[62] Firms are permitted to use native advertising – advertising that bears a similarity to the news, feature articles, product reviews, entertainment and other materials that surrounds it online, so long as the firm complies with the requirements of Rule 2210.[63] FINRA does not consider unsolicited third-party opinions or comments to be testimonials under Rule 2210.[64] However, if a broker likes or shares comments that have been posted, the broker has adopted the comments.[65]

Sanction Guidelines: In April 2017, FINRA updated its sanction guidelines to include one new principal consideration when assessing sanctions, three new guidelines, and one new general principal.[66] The new principal consideration examines whether a respondent has exercised undue

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59. *See* FINRA, REGULATORY NOTICE 17-18, SOCIAL MEDIA AND DIGITAL COMMUNICATIONS; GUIDANCE ON SOCIAL NETWORKING WEBSITES AND BUSINESS COMMUNICATIONS (Apr. 2017), *at* http://www.finra.org/sites/default/files/notice_ doc_file_ref/Regulatory-Notice-17-18.pdf.

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. *See* FINRA REGULATORY NOTICE 17-13, "SANCTION GUIDELINES; FINRA'S NAC REVISES THE SANCTION GUIDELINES (Apr. 2017), *at* http://www finra.org/ sites/default/files/Regulatory-Notice-17-13.pdf.

influence over a customer.[67] FINRA is formalizing its practice of considering this principal when determining whether there are aggravating circumstances present.[68] FINRA has also expanded its guidelines by including new sanction guidelines related to: (1) Systemic Supervisory Failures; (2) Borrowing From or Lending to Customers; and (3) Short Interest Reporting.[69] Last, FINRA has codified a new general principal which "addresses the potential mitigative effect of regulator or firm-imposed sanctions and corrective action."[70]

In addition to the new guidance, FINRA has also increased the monetary and non-monetary sanction guidelines for certain misconduct: (1) sales of unregistered securities that involve a high number of penny stock transactions; (2) churning; and (3) unauthorized trading.[71]

II. SEC Rules

Exemptions to Facilitate Intrastate and Regional Securities Offerings: The SEC has reviewed its rules governing exemptions from registration for intrastate and small offerings.[72] With respect to intrastate offerings, the SEC has amended Rule 147 and adopted Rule 147A.

Manner of Offering: Through prior guidance, the SEC had recognized that certain offering methods may be imperfect in terms of being limited solely to the residents of a state. For example, newspaper advertisements may encompass other states through circulation. However, the SEC has not considered that advertisement over the internet to be similarly targeted to the individuals of a state the way a newspaper might be targeted. Accordingly, the SEC has adopted a new exception to permit this form of solicitation, pursuant to its authority under Section 28 of the Securities Act of 1933, rather than under

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *See* Exemptions to Facilitate Intrastate and Regional Securities Offerings, Exchange Act Release 33-10238, 34-79161, 81 Fed. Reg. 83494 (Nov. 21, 2016), *available at* https://www federalregister.gov/documents/2016/11/21/2016-26348/exemptions-to-facilitate-intrastate-and-regional-securities-offerings.

Section 3(a)(11).[73] Rule 147A will permit general solicitation and advertising, so long as the sale of securities are only made to residents of the issuer's residence.[74]

Residency of the Issuers: Rule 147 has limited the availability of the rule to issuers incorporated in or organized in the state where the securities were offered. The issuer was also required to have its principal office in the state. Pursuant to the amendments to Rule 147, the SEC has replaced the requirement that an issuer have its principal office located in the state, with a requirement that its principal place of business be located within the state.[75] Rule 147A does not require that the issuer be incorporated in or organized in the state. It only requires that an issuer's principal place of business be within the state.[76]

Resale of Securities: Both Rules 147 and 147A will require that for six months from the date of sale of the security, re-sales may only be made to other residents of the state.[77]

Offerings Under Rules 504 and 505: The SEC is increasing the aggregate amount of securities an issuer may offer and sell under Rule 504 from $1 million to $5 million.[78] Rule 505 similarly permits offerings and sales of up to $5 million in securities. In conjunction with the increase in Rule 504, the SEC is repealing Rule 505.[79]

The changes to Rules 147 and 504, the repeal of Rule 505, and the adoption of Rule 147A became effective May 22, 2017.

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73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

III. CFTC Rules

Whistleblower Award Process: The CFTC has reviewed its rules governing whistleblowers and has made amendments and additions where needed.[80]

Eligibility Requirements: The CFTC has clarified that a claimant may receive an award in a Covered Action, in a Related Action, or both.[81] Additionally, the CFTC has eliminated the requirement that the claimant be the "original source" of the information.[82]

Retaliation Against Whistleblowers: The CFTC has reconsidered is prior interpretation of the Commodity Exchange Act that it had lacked authority to bring an enforcement action against an employer who violates the anti-retaliation provision of Section 23(h)(1)(A). The CFTC has now made it clear that violations of the Act may be pursued by the CFTC.[83]

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80. *See*, CFTC, Whistleblowers Award Process, 82 Fed. Reg. 24487 (May 30, 2017), *available at* http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2017-10801a.pdf.

81. *Id.*

82. *Id.*

83. *Id.*